62p

MONTANA LEGISLATIVE HISTORY

Chapter 759 19 91

Bill H 825 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 19	✓ C	Hearing Date(s)	Mar 28	✓ C
	Feb 20	✓ C		Apr 02	✓ C
		C		Apr 03	✓ C
		C			C
Date Out	Feb 21	✓ C		Apr 04	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Note: A Free Conference Committee was appointed. Its minutes were not reported.

HOUSE BILL NO. 825

INTRODUCED BY D. BROWN, DRISCOLL, STRIZICH, CLARK, JACOBSON, LYNCH, DARKO, DAILY, PAVLOVICH, MENAHAN, QUILICI, ELLISON, NATHE, THOMAS, LEE, R. JOHNSON, HOFFMAN, GILBERT, R. DEBRUYCKER, KELLER, J. RICE, HAYNE, PETERSON

IN THE HOUSE

FEBRUARY 13, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 14, 1991	FIRST READING.
FEBRUARY 22, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 23, 1991	PRINTING REPORT.
FEBRUARY 25, 1991	SECOND READING, DO PASS AS AMENDED.
	ENGROSSING REPORT.
FEBRUARY 26, 1991	THIRD READING, PASSED. AYES, 92; NOES, 7.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
APRIL 4, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 5, 1991	SECOND READING, CONCURRED IN.
APRIL 6, 1991	THIRD READING, CONCURRED IN. AYES, 44; NOES, 5.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 9, 1991	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS NOT

CONCURRED IN.

APRIL 11, 1991 — ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 16, 1991 — ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 22, 1991 — FREE CONFERENCE COMMITTEE REPORTED.

APRIL 23, 1991 — SECOND READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 24, 1991 — FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 29, 1991 — SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 825

INTRODUCED BY [signatures]

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATING TO THE CARRYING OF CONCEALED WEAPONS; AMENDING SECTIONS 45-8-315, 45-8-317, AND 45-8-351, MCA; AND REPEALING SECTION 45-8-319, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Permit to carry concealed weapon.** (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 2 years from the date of issuance. An applicant must be a United States citizen 18 years of age or older who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. This privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

LC 0188/01

(c) has been convicted in any state or federal court in any state of a crime punishable by more than 1 year of incarceration or, regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent, unless the applicant has been pardoned or 3 years have elapsed since the date of the conviction and the applicant is no longer under state or federal supervision for the crime;

(d) has been convicted under [section 7 or 8], unless he has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for his arrest;

(f) has been adjudicated in a criminal or civil proceeding in a court of any state or in a federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in a court of any state or in a federal court to

INTRODUCED BILL
HB 825

be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court or unless the sheriff has probable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled to the extent that the applicant should not be allowed to carry a concealed weapon; or

(h) was dishonorably discharged from the United States armed forces.

(2) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency; or

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (2)(a) through (2)(c).

(3) A photocopy of a certificate of completion of a course described in subsection (2), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (2).

NEW SECTION. **Section 2. Application, renewal, permit, and fees.** (1) The application form must be readily available at the sheriff's office and must read as follows:

CONCEALED WEAPON PERMIT APPLICATION

To be completed by each person making application:

RESIDENT OF MONTANA AT LEAST 6 MONTHS ( ) Yes ( ) No

CITIZEN OF THE UNITED STATES ( ) Yes ( ) No

18 YEARS OF AGE OR OLDER ( ) Yes ( ) No

PLEASE TYPE OR PRINT

Full name: .....

Last First Middle

Alias/Maiden/Nickname: .....

Address: Home: ..... Zip .....

Employer: ..... Zip .....

Phone: ...../...../.....

Home Employer Message

Place of birth: ..... Date of birth: .....

Driver's license #: ..... Issuing state: .....

Social Security #: ..... Sex .....

Ht. ..... Wt. ..... Eyes ..... Hair .....

Spouse's name: ..... Date of birth: .....

Spouse's maiden name: .....

Spouse's address if different from yours: .....

Spouse's place of employment: .....

Father's name & address: .....

Mother's name & address: .....

LIST EACH FORMER EMPLOYER OR BUSINESS ENGAGED IN FOR THE LAST 5 YEARS:

	Employer or business name	Address	Number of years
1.			
2.			
3.			
4.			
5.			
6.			

LIST EACH PLACE IN WHICH YOU HAVE LIVED FOR THE LAST 15 YEARS:

	City	State	Number of years
1.			
2.			
3.			
4.			
5.			
6.			

MILITARY SERVICE, BRANCH ..... FROM ..... TO .....

TYPE OF DISCHARGE ..... RANK UPON DISCHARGE .....

HAVE YOU EVER BEEN ARRESTED OR COURT-MARTIALED?

( ) YES ( ) NO

IF YES, COMPLETE THE FOLLOWING (Exceptions: minor traffic violations)

(Attach additional sheet if necessary):

	City	State	Charge	Date
1.				
2.				
3.				
4.				
5.				

LIST FIVE PERSONS WHOM YOU HAVE KNOWN FOR AT LEAST 5 YEARS THAT WILL BE CREDIBLE WITNESSES TO YOUR GOOD MORAL CHARACTER AND PEACEABLE DISPOSITION (DO NOT include relatives or present/past employers):

Name Address Phone

1. ....
2. ....
3. ....
4. ....
5. ....

IN COMPLETE DETAIL, PLEASE EXPLAIN YOUR REASONS FOR REQUESTING THIS PERMIT (Attach additional sheet if necessary):

.....
.....
.....
.....
.....
.....

I, the undersigned applicant, swear that the foregoing information is true and correct to the best of my knowledge and belief and is given with the full knowledge that any misstatement contained herein may be sufficient cause for denial or revocation of a permit to carry a concealed weapon. I hereby authorize any person having information concerning me that relates to the information requested by this application and the requirements for a concealed weapon permit, either public record or otherwise, to furnish it to the sheriff to whom this application is made.

.....

Signature

Sworn to and subscribed before me, a Notary Public, this ..... day of ....., 19.....

.....
Notary Public for the State of Montana. Residing at: .....
SEAL My commission expires: .....

(2) The application must be in triplicate. The applicant must be given the original at the time the completed application is filed with the sheriff, the sheriff shall keep a copy for at least 2 years, and a copy must, within 7 days of the sheriff's receipt of the application, be mailed to the chief of police if the applicant resides in a city or town with a police force.

(3) The fee for issuance of a permit is $50. The permit must be renewed for additional 2-year periods upon payment of a $25 fee per renewal and upon request for renewal made within 90 days before expiration of the permit. The permit and each renewal must be in triplicate, in a form prescribed by the department of justice, and must at a minimum include the name, address, physical description, signature, driver's license or state identification card number, and a picture of the permittee. The permit must state that federal and state laws on possession of firearms and other weapons differ and that a person who violates the federal law may be

prosecuted in federal court and the Montana permit will not be a defense. The permittee must be given the original, and the sheriff shall keep a copy and send a copy to the department of justice, which shall keep a central repository record of all permits.

(4) The sheriff shall conduct a criminal record and background check of an applicant who has not submitted a prior application to the sheriff, may require an applicant to submit his fingerprints, and may charge the applicant for the cost of the background check and $5 for fingerprinting.

(5) Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement [sections 1 through 5].

(6) A state or local government law enforcement agency or other agency or any of its officers or employees may not request a permittee to voluntarily submit information in addition to that required on an application and permit.

NEW SECTION. **Section 3. Denial of renewal -- revocation of permit.** A permit to carry a concealed weapon may be revoked or its renewal denied by the sheriff of the county in which it was issued if circumstances arise that would require the sheriff to refuse to grant the permittee an original license.

NEW SECTION. **Section 4. Appeal.** The denial or revocation of a permit to carry a concealed weapon or

refusal of a renewal is subject to appeal to the district court and from that court to the Montana supreme court.

NEW SECTION. **Section 5. Permittee change of county of residence -- notification to sheriffs and chief of police.** A person with a permit to carry a concealed weapon who changes his county of residence shall within 10 days of the change inform the sheriffs of both the old and new counties of residence of his change of residence and that he holds the permit. If his residence changes either from or to a city or town with a police force, he shall also inform the chief of police in each of those cities or towns that has a police force.

NEW SECTION. **Section 6. Immunity from liability.** A sheriff, employee of a sheriff's office, or county is not liable for damages in a civil action by a person or entity claiming death, personal injury, or property damage arising from alleged wrongful or improper grant, renewal, or failure to revoke a permit to carry a concealed weapon.

NEW SECTION. **Section 7. Carrying a concealed weapon while under the influence.** A person commits the offense of carrying a concealed weapon while under the influence if he purposely or knowingly carries a concealed weapon while under the influence of an intoxicating substance. It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be

imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

NEW SECTION. **Section 8.** **Carrying a concealed weapon in a prohibited place.** (1) A person commits the offense of carrying a concealed weapon in a prohibited place if he purposely or knowingly carries a concealed weapon in:

(a) a building owned or leased by the federal, state, or local government;

(b) a bank, credit union, savings and loan institution, or similar institution; or

(c) a room in which full meals are not served and alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

Section 9. Section 45-8-315, MCA, is amended to read:

"**45-8-315. Definition.** "Concealed weapon" ~~shall mean~~ means any weapon mentioned in 45-8-316 through ~~45-8-319 which shall be~~ 45-8-318 and [sections 1 through 8] that is wholly or partially covered by the clothing or wearing apparel of the person ~~so~~ carrying or bearing the weapon."

Section 10. Section 45-8-317, MCA, is amended to read:

"**45-8-317. Exceptions.** Section 45-8-316 does not apply to:

(1) any peace officer of the state of Montana;

(2) any officer of the United States government authorized to carry a concealed weapon;

(3) a person in actual service as a national guardsman;

(4) a person summoned to the aid of any of the persons named in subsections (1) through (3);

(5) a civil officer or his deputy engaged in the discharge of official business;

(6) a probation and parole officer authorized to carry a firearm under 46-23-1002;

(7) a person ~~authorized by a judge of a district court of this state to carry a weapon~~ issued a permit under [section 1]; ~~or~~

(8) a criminal investigator in the office of the attorney general or in a county attorney's office;

(9) a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; or

~~(8)~~(10) the carrying of arms on one's own premises or at

one's home or place of business."

Section 11. Section 45-8-351, MCA, is amended to read:

"**45-8-351. Restriction on local government regulation of firearms.** (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or concealed or unconcealed carrying of any weapon, including a rifle, shotgun, or handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed ~~weapons,---the--carrying--of~~ or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether

in airports or otherwise."

NEW SECTION. **Section 12.** **Existing permits.** A permit to carry a concealed weapon issued before October 1, 1991, is valid until the expiration date of the permit.

NEW SECTION. **Section 13.** **Requirements for granting governmental entity immunity from suit.** Because [section 6] grants a sheriff, his employees, and the county immunity from suit for injury to person or property, a two-thirds vote of each house of the legislature is required for enactment of [section 6]. If [section 6] is not approved by the required vote, [section 6] is void. The remaining sections of [this act] are valid and remain in effect in all valid applications upon enactment.

NEW SECTION. **Section 14.** **Repealer.** Section 45-8-319, MCA, is repealed.

NEW SECTION. **Section 15.** **Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply to [sections 1 through 8].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0825, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill revises the law relating to the carrying of concealed weapons.

ASSUMPTIONS:

1. The bill shifts responsiblities from district courts to county sheriffs and is revenue neutral. Therefore, there is no material fiscal impact on state or local governments.

FISCAL IMPACT:

No material impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

No material impact.

2-19-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Dave Brown 2/20/91
DAVE BROWN, PRIMARY SPONSOR DATE

Fiscal Note for HB0825, as introduced

HB 825

HB 825 INTRODUCED BY D. BROWN, ET AL.
REVISE CONCEALED WEAPON PERMIT LAW

2/13	INTRODUCED		
2/13	REFERRED TO JUDICIARY		
2/14	FIRST READING		
2/14	FISCAL NOTE REQUESTED		
2/19	HEARING		
2/19	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED AS AMENDED	90	7
2/26	3RD READING PASSED	92	7
	TRANSMITTED TO SENATE		
2/26	FIRST READING		
2/26	REFERRED TO JUDICIARY		
3/28	HEARING		
4/04	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/05	2ND READING CONCURRED	40	9
4/06	3RD READING CONCURRED	44	5
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS NOT CONCURRED	86	12
4/11	FREE CONFERENCE COMMITTEE APPOINTED		
4/22	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	85	7
4/23	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	92	5
	SENATE		
4/16	FREE CONFERENCE COMMITTEE APPOINTED		
4/22	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/24	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
5/03	SIGNED BY SPEAKER		
5/03	SIGNED BY PRESIDENT		
5/03	TRANSMITTED TO GOVERNOR		
5/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 759	EFFECTIVE DATE: 10/01/91	

HB 826 INTRODUCED BY M. HANSON, ET AL.
REVISE AGRICULTURAL LAND VALUATION; 7-YEAR AVERAGE; 6.5% CAPITALIZATION RATE

2/13	INTRODUCED		
2/13	REFERRED TO TAXATION		
2/14	FIRST READING		
2/14	FISCAL NOTE REQUESTED		
2/20	FISCAL NOTE RECEIVED		
	DIED IN COMMITTEE		

HB 827 INTRODUCED BY HARPER, ET AL.
APPROPRIATE MONEY FOR CERTIFIED COMMUNITIES PROGRAM

2/13	INTRODUCED		
2/13	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/14	FIRST READING		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/09	2ND READING PASSED	80	15
3/09	TAKEN FROM ENGROSSING AND REREFERRED TO APPROPRIATIONS		

Montana Watts, Mobile and RV Park Owners Association of Montana, gave written testimony opposing HB 767 and HB 768. EXHIBIT 15

Brendan Beatty, Montana Association of Realtors, stated that he is opposed to HB 767 and HB 768.

Judy Peterson, Buchanan Enterprises, gave written testimony opposing HB 767 and HB 768. EXHIBIT 16

Betty Mathison, Pines Apartments - Great Falls, gave written testimony opposing HB 767 and HB 768. EXHIBIT 17

Questions From Committee Members: NONE

Closing by Sponsor: NONE

HEARING ON HB 825
REVISE CONCEALED WEAPON PERMIT LAW

Presentation and Opening Statement by Sponsor:

REP. DAVE BROWN, HOUSE DISTRICT 72, stated that a bill in the last Legislature allowed for permits for carrying a concealed weapon didn't get off the house floor. He stated that the HB 825 is a decent piece of legislation, but he felt it wouldn't make everyone happy. He stated that many people spent a lot of time during the interim to put this bill together based on statutes that seem to be working well. The County Sheriff's Department is where an application is received, the Sheriff will then issue the permit if applicable. The permit is valid for 2 years. The applicant must be 18 years of age or older, a U.S. Citizens, have a valid Montana Driver's License and identification as to whose picture is on the Driver's License, and be a resident of the state of Montana for the last 6 months. Rep. Brown said that the privilege of carrying a concealed weapon will not be denied unless the applicant falls into one of the categories listed in the bill.

Proponents' Testimony:

Clyde G. Byerly, Montana Rifle and Pistol Association, gave written testimony in favor of HB 825. **EXHIBIT 18**

Barry Michelotti, Sheriff - Cascade County, gave written testimony in favor of HB 825. **EXHIBIT 19**

Charles Hughes, Montana Rifle and Pistol Association, gave written testimony in favor of HB 825 along with some proposed amendments. **EXHIBIT 20**

Bill Bigelow, National Rifle Association, stated that his association is in support of HB 825.

Mary Sneddon, Property Owner, stated that she represents a number of women that live alone. She felt that this bill was important to all women that live alone and need to protect themselves with a handgun. She asked the committee for their support of HB 825. EXHIBIT 21

Max Maddox, Chinook Gun Club, stated that he is in support of HB 825.

Tom Harrison, Montana Police Officers Association, stated that his association has some amendments to offer to the committee for HB 825. He stated that his association is concerned about handgun language that is it clear it is the only accepted concealed weapon. He suggested that on page 3, line 3, change the word "probable cause" to "reasonable cause". He suggested that in section 8, page 11, subsection c, language which is an attempt to allow concealed weapons in a restaurant that has a liquor license but not in a regular establishment which doesn't serve "full meals", should be changed to "in any licensed premises where" instead of line 11. He asked the committee for their favorable consideration to the bill and his association's proposed amendments.

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor:

REP. BROWN stated that he was in agreement with some of the amendments offered but not others and would discuss them further in executive session.

ADJOURNMENT

Adjournment: 12:15 p.m.

BILL STRIZICH, Chair

JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 2-19-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

EXHIBIT 18
DATE 2-19-91
HB 825

Testimony of Clyde G. Byerly

Subject: House Bill 825 , Concealed handgun carry bill.

I wish to express support for the bill. I represent the Montana Rifle and Pistol Association which is a State membership organization of shooting sports and hunting enthusiasts.

The present method of reviewing and granting handgun carrying permits is not standardized within the State. There are no specific guidelines for use to determine if applicants are eligible for a permit to carry. All to often permits have been denied based on the personal whims and philosophy of judges rather than the applicants qualifications.

We need to codify the requirements which persons must meet to be considered for the issuance of a permit. The restrictions in the bill that spell out under what conditions a permit will be denied are comprehensive and adequate for the issuing agency to make an informed decision on denying a permit.

With the recent advent of big game hunting with handguns, many sportsmen in the field are carrying pistols which are best carried and protected under protective clothing. At present these persons are in technical violation of the laws. We need to exempt sportsmen in the field from the present concealed carry restrictions.

The application for the permit attached to the bill is in many ways much more comprehensive than it needs to be. An ADULT over 21 years old is the only one who can apply for the permit, therefore there is no need to furnish the information on the applicants family. This is an invasion of the privacy of these persons. The requirement to list the applicants employers for the past 5 years in not necessary. Perhaps the last two employers would be sufficient. The requirement to list the applicants addresses for the last 15 years is unnecessary and unreasonable. A time period of 5 years should be sufficient since this is the maximum time listed in any provision in the bill. The requirement for listing five character witnesses is over and above the federal requirement for a security clearance. We recommend that two witnesses be provided and that these can include employers since there is a provision to list employers on the application. The last requirement on the application is for the applicant to give COMPLETE detail on the reasons for the application. It appears that if the applicant does not fill this section out in enough detail to satisfy the sheriff there is a possibility that the background check will be delayed or the issuance of the permit denied. This bill does require any specific reasons for the issuance of the permit. Issuance is based on the character and eligibility of the applicant.

Ex. 18
2-19-91
HB 825

There is no requirement for the notary seal since the applicant must certify that the statement on the application are correct.

In short, the application for the permit should be as simple as possible for the sheriff to make the determination if the INDIVIDUAL does not fall into any of the categories that would result in the denial of a permit. The detail and the information required on it should not be a hindrance to the average person which would discourage them from requesting a permit.

The office of primary responsibility for issuance of the permit should be the one which can best perform background checks on applicants. With the liability limitation in the bill, there should be little cause for opposition from County Sheriffs to performing this service for the public.

This is a revenue generating bill for the County Sheriffs and the actual cost of the initial background check should be covered by the application fee. The application fees should reflect the actual cost of conducting a background investigation. The fees should be set high enough to cover these costs but not so high that they discourage the average person for applying for a permit. We feel that there is no justification for the $50.00 initial application fee. The bill as drafted allows the sheriffs office to charge an additional fee for the background check. This should be included in the initial application fee. A figure of $25.00 for the initial fee plus the addition of $5.00 for the fingerprinting should be sufficient to cover the actual cost of the check. Cooperation between law enforcement agencies makes the background check a routine communication matter.

The restrictions on carrying firearms in public places in the bill have been reviewed and discussed with various law enforcement agencies and officers. We feel that the restrictions should be stated in more general terms so the applicant is not confused by the wording of the restrictions.

This act in no way degrades the current laws which prohibit the ownership and carrying of various firearms which have already been classified as illegal to posses or carry.

In summary, this is a law whose time has come. We must bring organization and reason to the present inconsistent system.

END

EXHIBIT 14
DATE 2-19-91
HB 825

WITNESS STATEMENT

NAME Barry Michelotti BILL NO. HB825

ADDRESS 160 Dune Drive, Great Falls, MT

WHOM DO YOU REPRESENT? Sheriff, Cascade County

SUPPORT x OPPOSE _____ AMEND _____

COMMENTS:

I am in support of House Bill 825. I feel it is a fair proposal to ensure that the sportsman is not affected by restricting his or her ability to carry a firearm while engaging in lawful hunting or fishing and also ensures that all citizens have an equal opportunity, if they so desire, to legally carry a weapon that is concealed.

I support a reasonable fee to be charged by the Sheriff's departments in order to fund the license system. The fee is realistic due to costs associated with the background investigation.

I think this bill will be a benefit for the law abiding citizen and law enforcement.

Barry Michelotti

PLEASE LEAVE PREPARED STATEMENT W[illegible]H SECRETARY.

Form CS-34
Rev. 1985

To Chairman

DATE 2-19-91
HB 825

52nd Legislature LC 0188/01

House Bill 825; Amendments

Submitted by: Montana Rifle and Pistol Association

Amendment # 1.

On Page 3, at line 11, amend Section 1., subsection (2) in the following manner:

After the words "firearm by", and before the colon, insert the words, "any one of the following, at the applicant's choice".

Effect and Rationale: This change ensures that the applicant may select the method by which he meets the requirements of this subsection (2).

Amendment # 2.

On page 4, at line 24, and on page 5 at lines 1 and 2, amend Section 2., subsection (1) in the following manner:

On each of the lines 24, 1, and 2, insert the language ", if any" immediately before the colon.

Effect and Rationale: Some applicants may not have this information to offer, and should not be able to be construed as not having completed the application if the information does not exist.

Amendment # 3.

On Page 5, at line 5, amend Section 2., subsection (1) in the following manner:

After the words "Driver's License", insert the words, "or State I.D. Card".

Effect: To allow use of a State-issued I.D. card if a person does not possess a Driver's License.

Rationale: There may well be persons who have need for a permit, but do not drive. Example: someone handicapped.

This page deals with The application if new application is not necessary coincident

Exhibit # 20
2/19/91 HB 825

Amendment # 4.

On Page 5, at line 6, amend Section 2., subsection (1), in the following manner:

Delete the language, "Social Security #:.....".

Effect: To delete the requirement that an applicant provide a SSN.

Rationale: As with application for a Driver's License, it may not be legally allowable to require the applicant's provision of a SSN. SSN can only be required for state and federal tax matters, and for Social Security reporting.

Amendment # 5.

On Page 5, at lines 8, 9, 10, 11, 12, and 13, amend Section 2, subsection (1) in the following manner:

Delete all of lines 8, 9, 10, 11, 12, and 13.

Effect: To remove requirements that applicants submit information about spouse and parents.

Rationale: This information is not necessary, does not bear on the applicant's eligibility to receive a permit, constitutes an invasion of privacy, and may be an illegal requirement because of privacy infringement.

Amendment # 6.

On Page 5, at line 24, amend Section 2, subsection (1) in the following manner:

At the end of line 24, delete the numeral "1" from the number "15".

Effect: To require a list of residences for the previous 5 years, rather than the previous 15 years.

Rationale: Other information requests in the application reach back 5 years; this request should be consistent; further than 5 years is unnecessary.

#7 & #8 not necessary if there is a new application

—Exhibit # 20
2/19/91 HB 825

Amendment # 7.

On Page 6, at line 21, amend Section 2., subsection (1) in the following manner:

In the language "LIST FIVE PERSONS", delete the word "FIVE", and replace it with the word "TWO".

Also: On Page 7, delete lines 3, 4, and 5.

Effect: To require the names of only 2 "credible wittnesses" rather than 5.

Rationale: Providing the names of two references is sufficient; requiring five is excessive.

Amendment # 8.

On Page 7, at lines 6, 7, 8, 9, 10, 11, 12, 13, and 14, amend Section 2., subsection (1) in the following manner:

Delete all of lines 6, 7, 8, 9, 10, 11, 12, 13, and 14.

Effect: To remove the requirement that the applicant state a reason for application.

Rationale: HB825 establishes that permits are granted according to merit, not according to need. Either the applicant qualifies for a permit under the requirements of Section 1, or he does not. Reason for the permit has no bearing upon whether or not the permit will be granted, and offends the spirit of HB825.

Exhibit # 20
2/19/91 HB 825

* important
Amendment # 10.

On Page 9, at line 21, amend Section 3., in the following manner.

Delete the words "it was issued" and replace them with the words "the permittee resides".

Effect and Rationale: If the permittee should change county of residence, this change would allow the sheriff of the county of residence to deny renewal of a permit or revoke permit. This is a proper function for the sheriff of the county where the permittee resides, rather than the sheriff of the county where the permit was issued, when these counties are different.

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* important
Amendment # 11.

On Page 11, at lines 9 and 10, amend Section 8, subsection (1)(b) in the following manner:

Delete all of lines 9 and 10 (all of subsection (1)(b)), and renumber item (c) on line 11 as (b).

Effect: To remove financial institutions from the list of places where exercise of permits is prohibited.

Rationale: Some permittees will obtain permits specifically because they carry large sums of cash or valuables to and from a bank or financial institution. These people will be faced with an impossible situation when they arrive at the door of the bank. It is certain that a person who intends to rob a bank will NOT submit himself to the permit application process as a prelude to commission of his robbery.

Amendment # 12.

On Page 14, at line 4, amend Section 12 in the following manner:

At the end of line 4, after the period, add the following new sentence, "A permit that is valid after October 1, 1991, may be renewed pursuant to (Section 2).

Effect: To allow currently existing permits that are still valid, after HB825 becomes effective, to be renewed, rather than requiring a new application.

Rationale: The renewal provision is specifically for renewal of existing permits, and should be applied to permits already existing, not just permits created under HB825.

Amendment # 13. (Note: Out of sequential order.)

On Page 9, at line 5, amend Section 2., subsection (3) in the following manner:

After the end of the last sentence in subsection (3), at line 5, add a new sentence that reads, "Replacement of a lost permit must be treated as a renewal pursuant to (Section 2)."

Effect: To add a provision for dealing with a lost permit.

Rationale: Some process must be provided for replacement of a lost permit. The simplest solution is to simply treat it as a renewal.

- End of MRPA Amendments to HB825 -

e in eight women you encounter on the street own handguns

EXHIBIT 21
DATE 2-19-91
HB 845

Armed and Female:

Why rapidly increasing numbers of American women are turning to guns for self-protection

e in eight women in the U.S. own firearms. That's a figure Paxton Quigley Personal Protection Services in Los Angeles, and author of the book rmed and Female," wants you to remember. It translates into twelve million men who have decided to take self-protection into their own hands—and e number is growing.

y Jeanne A. Harris

"I interviewed hundreds upon hundreds of women who had been raped," says Paxton Quigley, author of the eye-opening book *Armed and Female*. "After ening to their stories, there was no doubt ıy mind that women should own guns for -defense.

If more women owned guns and it was licly known," she continues, "the incidence ape would decline in the United States ıin the next five years, just because of the licity. A potential rapist would never know woman is carrying a gun."

A feminist and onetime Vietnam protester, ton Quigley is a far cry from the stereocal pro-gun advocate. Yet she stands as of today's most vocal proponents of gun nership for women. She sees her task as vincing a conditioned public that, far from being exclusively a symbol of crime and violence, a handgun is the most viable means of self-protection for women in an increasingly dangerous society.

This is a rather surprising stance for a former anti-gun activist who, for over a decade, supported gun control legislation and even helped found a major anti-gun organization. While Quigley admits that she feared and hated guns for most of her life, it was a single, shocking incident in 1968 that pushed her into the arms of the gun control movement:

"I was involved with the Robert F. Kennedy campaign. When he was shot to death, of course, it was very upsetting." The shock of his death left a void in the lives of his staff members, many of whom turned their anger into action.

"Some of us in the Kennedy organization banned together and started a handgun control group," Quigley recalls. "I felt strongly at the time that stricter gun control laws would not only reduce the amount of crime in the country, but they would also prevent the assassinations of some of our great leaders," she says.

The fact that Kennedy's assassin, Sirhan Sirhan, was captured and brought to justice did not quell the call for gun control. The emotional backlash that surfaced after the death of the energetic, young presidential hopeful left a void that cried out for a kind of justice that no court could sufficiently answer. Would Sirhan Sirhan's execution have been enough justice for Quigley? "No," she flatly states.

Quigley: "It's common sense to know how to defend yourself."

"There just became a point in my life where I said 'That's it. Not only am I in favor of women owning guns, I'm also going to advocate it.' "

"Because I didn't want it to happen again. And ...ne, at that stage of my life, the gun was ...portant as the person who committed ...ct."

Although the newly formed anti-gun group ...ushing for stricter gun control laws, there ... feeling that completely banning handguns was an achieveable goal. In the wake of a string of assassinations that took the lives of two Kennedys and Martin Luther King, ...any in the movement, including Quigley, ...ed on growing anti-gun sentiment to turn their ideals into legislation.

She recalls an argument she had back then ... a friend who was concerned about her anti-gun stance: "He was very angry that I was working for this gun control organization. He said, 'Do you know what you are doing? ...t you have any understanding of what the Second Amendment is all about?' And its significance never really dawned on me, because I was so emotionally adamant about ... anti-gun."

Despite her single-minded, emotionally-charged vendetta against firearms, Quigley was forced to confront the issue of gun ownership once more—only this time through a series of crimes that struck frightfully close to home. As a single ...an working first in Washington, D.C., and ...in Los Angeles, Quigley began to experience a change of heart after her house was burglarized twice, her car was stolen while ...ooked on from her kitchen window, and ... of her friends were raped, one in her own bed. During this time, Quigley became fearful of even walking from her car ... house, afraid of what ...t be waiting for her when she opened the door.

But when she accompanied a friend to a gun shop, ...t went on in her mind. There could be a means, she began thinking, that a woman ...uld defend herself with ...idence. The idea shocked her. She had hated guns for a long time. And ... she stood thinking of ...gun not as an enemy, she says, but as a protective force. She never thought ...g her gun-control ...e, that the same weapons she had lobbied against had any purpose but ...m another human be...

It was then that Quigley began to explore the reasons why people own guns. Her search brought her face- to-face with hundreds of women who had been brutally raped. The stories they told of their experiences shook Quigley to her core. "There just became a point in my life where I said 'That's it. Not only am I in favor of women owning guns, I'm also going to advocate it.' That was my turning point."

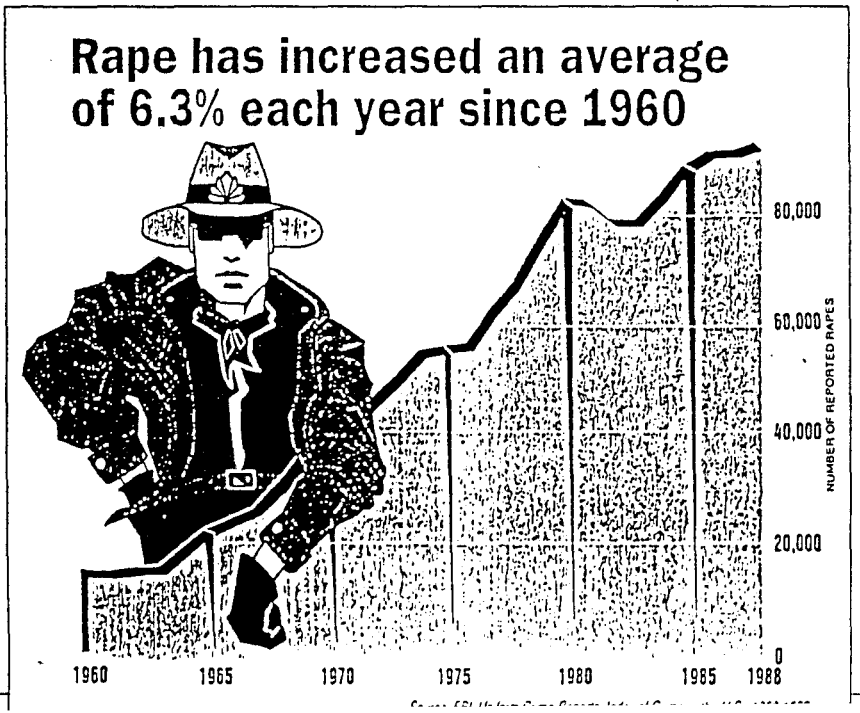
More women are learning how to shoot than ever before

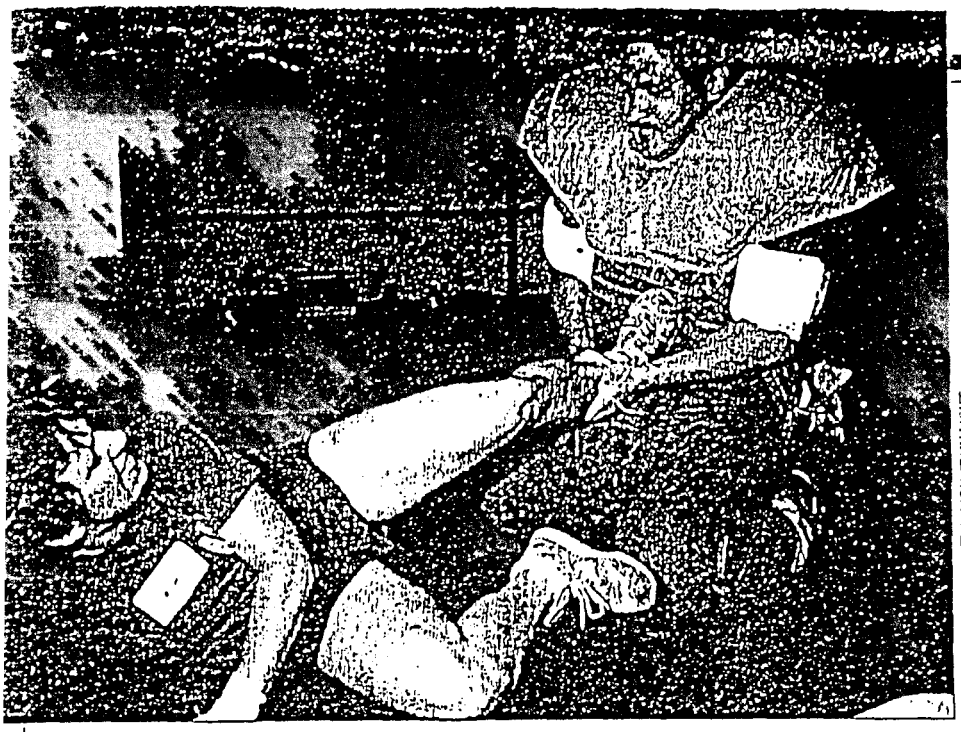
Regaining control

Quigley's exploration of women's need for guns in self-protection led her to write *Armed and Female*, which became an instant success. Now in its second printing, her book has generated nationwide interest and inspired Quigley to start Personal Protection Strategies, a series of courses that teach women and men alike basic self-protection techniques. Although she is winning many converts, her task, she has found over the last year, is an arduous one. Many women simply have a mental block against the idea of self-defense, even though they are acutely aware of the increasing crime problem in modern society.

Her job begins with an explanation of the basic problem of fear and denial. Criminologists have found that, on the whole, women have a greater fear of crime than men. The reasons stretch from the physiological to the psychological. Women are physically more vulnerable than men, and thus easier targets. They do not, as children, learn the aggressive rough-house play that marks boys' activities.

In addition, most Americans have been taught to rely on law enforcement exclusively to aid them in times of crisis. However, law enforcement, stretched to the limits by having to fight an increasingly violent and deadly drug war, cannot be counted on to maintain personal safety like it used to. In fact, in a surprising and perhaps absurd judgment, *Warren v. Dis-*





BARBARA CUSHMAN ROWELL/MOUNTAIN LIGHT

Model Mugging courses teach women to ward off would-be rapists using basic martial arts techniques and street-fighting savvy

trict of Columbia, the D.C. Supreme Court ruled that the police are responsible only for the safety of the general population of the community, not the protection and defense of its individual citizens. Now is the time, Quigley concludes, for people to take more responsibility for their own safety.

One-on-one crimes

Many crimes take place so quickly that there is no chance that the victim will be able to call for help. Obviously a woman who is being raped will not have time to dial "911." Rape and "one minute" crimes like purse snatching and assault, are crimes that women tend to fear the most; they instinctively know there is little chance they will be rescued.

Because law enforcement cannot be everywhere at once, Quigley says it is important for a woman to learn how to protect herself. To accomplish this, a woman must first overcome her fear of being a victim of crime. Overcoming that initial fear, Quigley has found, brings with it many rewards; women who have learned to defend themselves report greater self-confidence and a feeling of em-powerment.

Overcoming fear, more than anything else, means confronting that denial. "First, a woman has to confront her fear, and say, 'Yes I am fearful.' There are, unfortunately, a number of women who were sexually abused when they were young, or else raped. But rather than confront what they've gone through, they often bury it and say, 'I'm not going to think about it.' " Understandable but deadly, says Quigley.

"Once a woman successfully confronts her fear, she can say, 'Okay, I'd like to prepare so that if I am in danger *I have choices.* I have learned a body of information that I will be able to use if the need arises.' "

But many women, strangely, are not actively interested in their personal safety, Quigley has found. "It's a real low priority item for many people. My 3-hour seminar on personal protection costs only $35. But I can see in people's eyes that they'd rather spend the $35 on getting their hair done than on spending time learning how best to protect themselves," she noted.

As an author and lecturer, Quigley spends a lot of her time pointing out victimization risks to the women in her seminars. But statistics cannot take the place of a real incident.

"What often happens is that soon after a woman is assaulted or raped, she wants to learn how to protect herself. She'll say, 'I don't want this to ever happen again.' But later she'll push it out of her head because it brings up a lot of bad memories about being victimized. This is where the denial kicks in."

Quigley adds, "Our society doesn't encourage people to defend themselves. It is unfortunate that self-defense (unarmed) is not taught in the grammar schools. Kids should be learning it early on because it would help them in terms of having better personal lives, too."

Quigley is unequivocal about one point: For a woman a handgun is an equalizing force in a compromising situation. No other weapon, she discovered, can adequately serve this purpose. And no other weapon has the same ability to turn a frightfully dangerous situation in the woman's favor.

In response to the gun control propaganda claiming that women are likely to be shot with their own weapons, Quigley says: "That's simply not true. It is very difficult to get a short-barrelled gun away from a person who's holding that gun and has the intention of shooting." In most cases, she has found, simply displaying the handgun is enough to scare many would-be victimizers away

Interviews murderers and rapists

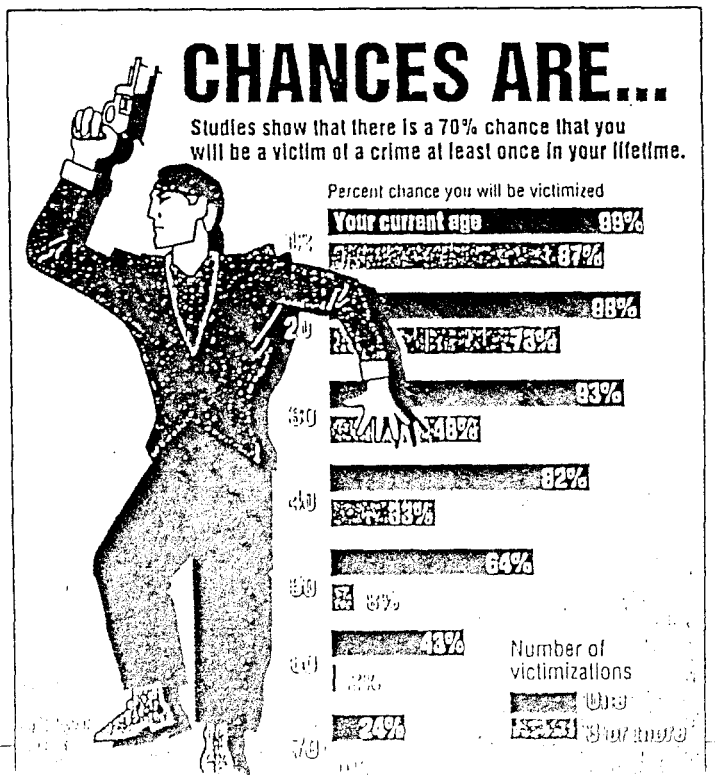
"I went into San Quentin prison to talk to murderers and rapists about what they thought about women owning guns," Quigley recalls. "They told me that when they are looking for a victim, they're scared because they basically want to do their deed and leave. They don't want to get into a fighting situation *because they may not win.* They're going to look for people who have got their heads in the heavens, not someone who looks capable of defending herself."

As for carrying a handgun: "If you feel you are in jeopardy, if there's a chance that someone's going to attack you, yes, you should carry a gun," Quigley states in no uncertain terms. "Of course, a gun can't be used in all situations. You may not be able to get it in time. You may find yourself in a situation where you could hurt innocent bystanders or accidentally shoot a child. That's why it's so important for women to learn how to fight."

A woman's guide to street fighting

Good self-defense classes, Quigley says, will teach basic martial arts techniques while emphasizing down-and-out street fighting.

"One of the best self-defense



"In a surprising judgment the D.C. Supreme Court ruled that the police are responsible only for the safety of the general population of the community, not the protection and defense of its individual citizens."

ourses in the United States for women is Model Mugging," she states. "In 40 percent of the assaults on women, the victim is knocked to he ground within six seconds and that's where he has to fight. Model Mugging teaches you o fight from the ground, and also to fight full force. For safety reasons, a lot of self- defense lasses don't allow you to strike full force, nd they don't allow you to kick for the groin r scratch at the face and the eyes."

Model Mugging, which has a series of independent chapters nationwide, teaches basic elf-defense moves, and women apply them n full-force fights with a "mugger" dressed from head to foot in protective padding. This novative concept of self-defense pits a woman gainst the padded assailant in a number of ommon victimization situations—in a subterranean parking lot, at an automated-teller achine, walking down a dimly lit street, and ven an attack that may occur in the victim's wn bed. The attacker continues to assault the woman until she has rendered enough lows to convince the padded assailant he ould be knocked out.

When Quigley took the four-week course, she faced the assailant 40 times: "Some days when I was getting ready to be so-called mugged, I would be terribly frightened. But hen you're fighting, your focus is completely n what you are doing. Some days I would ome home and burst out crying because I had gone through such an emotional and physcal situation. But other times I would be just bsolutely elated because I had just beat the eck out of that guy," Quigley recalls. "Not only does it build confidence, it builds empowerment in a woman and she begins to realize that, yes, she has the ability to fight off n attacker."

Stress-relief through self-defense

Quigley finds that the biggest hangup women ave about self-defense is their prejudice against uns. "There are a lot of women in the feminist ovement, unfortunately, that still think they don't have the right to defend themselves," Quigley says. "There are also a lot of people who ay they are non-violent and could never hurt nother human being, even if that person has already raped 17 women." Others, she says, simply have not been exposed to guns properly and iew them as the sole domain of men.

Ironically, she has found that many women who are reluctant even to handle a gun turn ut to be better marksmen, and to enjoy shooting more, than men. Handgun self-protection for women is a relatively new field, she says, even though approximately 12 million women currently own guns.

"Being prepared for the statistical long shot of being a victim of violent crime is really no more extraordinarily prudent that wearing seat belts in a car or having a fire extinguisher in the kitchen."

PAXTON QUIGLEY, *ARMED AND FEMALE*, NEW YORK: E.P. DUTTON. ©1989 PAXTON QUIGLEY PRODUCTIONS. $18.95 SECOND PRINTING, SPRING 1990. PAPERBACK EDITION AVAILABLE IN THIS FALL FROM ST. MARTIN'S PRESS.

A new interest in handguns is being sparked across the country as women realize that self-defense *is* practical and can actually help them live better lives, says Quigley. Learning effective self-defense helps reduce the stress of living in a hostile environment by providing a woman with more choices in the event she has to protect herself.

To meet this growing demand, Quigley notes that more gun ranges are putting together handgun courses especially designed for women. "A public range in Orange County approached me about designing a course by and for women," she says. "Women seem to work better with female instructors when it comes to self-defense as well as gun training. There's a comraderie; the teacher can act as a role model. A man's perspective of women's fears and needs is really quite different."

Most law enforcement agencies, while agreeing with the concept of women's self defense, simply lack the manpower to put together shooting schools for women. Quigley recommends checking with local gun clubs, many of which advertise in the yellow pages, to find a suitable course. There are also local women's gun clubs where a woman can go and practice with other women. If a course designed for women is not available locally, Quigley suggests talking to the gun range about setting up a program.

On the right track

Presently approximately 100 million households contain at least one gun. Recent polls show that 1 in 8 women are also gun owners. As the reality of crime becomes more apparent, Quigley says, that trend will continue. The vast majority of gun owners are seldom publicly visible; many consider gun ownership a private matter, not a political hot potato.

"I have a number of friends who now own guns, both men and women, who are liberals and would never join the NRA or vocalize their thoughts," says Quigley. "I know some people who actually have lots of guns, and that really surprised me. They only tell because they know my position, and it will come out in conversation."

In the end, the question turns back to teaching women that they have the right and the ability to defend themselves, Quigley states. "We have to get women over their fear and dislike of guns. We have to get them thinking that they have the right to self-defense. Some people think we are absolutely nuts. They will say, 'Oh, I know your book, Armed and "Dangerous." ' That's how they view me and my book. They will laugh when they say it, but that is how they really feel.

SHERROW/NPHOTO

38 caliber handgun. Many women carry it because of its small size but adequate stopping power

"But when you come right down to it, it's not a question of being paranoid. It's common sense to know how to protect yourself."■

Jeanne Harris is Assistant Managing Editor of New Dimensions.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. HB #825

DATE 2-19-91 SPONSOR(S) Rep. Brown

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Clyde G. Byerly, Great Falls	mt. Rifle & Pistol Assoc	✓	
Max Maddox	Chinook Gun Club	✓	
Charlie Hughes	Mt Rifle & Pistol Assoc	✓	
Lito Culbert	property owner	✓	
Mary Sneddon	" "	✓	
Bill Bigelow	NRA	✓	
DAVE Brown	Sponsor-HD #72	✓	
Tom Harrison	mt. Sheriffs & Peace Offrs	✓	
A. M. Elwell	WKSM	✓	
Geriger Maddox	self	✓	
Firearm Bounders	Butte community Union		✓
Mickey King	Helena Indian Alliance		
Sheila Foster	self	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Discussion:

Dan Russell stated that he felt Rep. Lee's concern about the bill was the same as his. He stated that his concern was people who receive deferred sentences and who are then on probation. What amendment #2 offers the courts is another option that they do not have available to them now. Mr. Russell stated that if amendment #2 is put into the bill, he would ask Rep. Lee to consider including the language that it be done with the approval of the facility or program.

Motion/Vote: **REP. LEE MADE A SUBSTITUTE MOTION** to amend HB 747 by not adopting amendment #2, but to substitute #4 in its place. **EXHIBIT 1.** Motion carried 16 to 4 with Rep's: Gould, Clark, Stickney, and Nelson voting no.

Motion/Vote: **REP. STICKNEY** moved to amend HB 747 with the amendments proposed by Rep. Brooke. **EXHIBIT 2.** Motion carried unanimously.

Motion/Vote: **REP. LEE MOVED HB 747 DO PASS AS AMENDED.** Motion carried 18 to 2 with Rep's: Gould and Wyatt voting no.

EXECUTIVE ACTION ON HB 668

Motion: **REP. DARKO MOVED HB 668 DO PASS.**

Motion/Vote: **REP. DARKO** moved to amend HB 668. **EXHIBIT 3.** Motion carried unanimously.

Motion/Vote: **REP. DARKO** moved to amend HB 668 on line 12 strike "revoke" and insert "suspended"; on line 13 strike "multi" and insert "second or subsequent". Motion carried unanimously.

Motion/Vote: **REP. DARKO MOVED DO PASS AS AMENDED.** Motion carried 12 to 6. **EXHIBIT 4**

EXECUTIVE ACTION ON HB 825

Motion: REP. BROWN MOVED HB 825 DO PASS.

Motion: REP. BROWN moved to amend HB 825. (Refer to Standing Committee Report) Motion carried unanimously.

Discussion: REP. WHALEN stated that he felt HB 825 was a good bill, but he didn't like the section dealing with immunity from liability.

REP. BROWN stated that he understood Rep. Whalen's concern but the bill is not effective if it goes to the Governor with less than two-thirds vote, it means the liability provision doesn't apply in the strength that it is in the bill. Rep. Brown stated that he would have to risk losing Rep. Whalen's vote and hope to get the other 67 because the Sheriffs' want the bill iron clad and he has to go with the bill as amended.

REP. CLARK stated that if a Sheriff found something in a person's background that would prohibit that person from gaining a concealed weapon permit and issued one anyway, the liability doesn't exempt the Sheriff from that situation.

REP. WHALEN stated that the new section of the bill states that no matter what, local law enforcement people will not be held liable. He stated that he was fed up with local governments not wanting to do their job, unless they are immune from suit.

REP. TOOLE stated that there is a provision that states the modern way to do business is grant immunity to people for the things they were always responsible for. He felt that granting immunity from liability is unnecessary and bad policy. He stated that it is a good bill that has a stupid provision.

Motion/Vote: REP. TOOLE moved to amend HB 825 to delete section 6. Motion failed.

Motion: **REP. BROWN MOVED HB 825 DO PASS AS AMENDED.**

Discussion

REP. BROOKE asked if any of the training courses require an eye test?

REP. BROWN stated that he didn't think so.

REP. BROOKE asked if Rep. Brown would be agreeable to an amendment making an eye test mandatory?

REP. BROWN stated that he would have no objection to that amendment.

Motion/Vote: REP. BROOKE moved to amend HB 825 on page 1, line 19, insert "an applicant must pass an eye test administered by the Sheriff that is no more stringent than a test for a driver's license and if the applicant fails the test he/she must wear corrective lens". Motion failed.

Discussion:

REP. WHALEN reminded the committee that the bill is not about telephones but dangerous guns and knives. When someone pulls out their concealed weapon, in any situation, and an innocent person

gets hurt, you may find that the person carrying the concealed weapon should not of been granted a permit because their background check revealed something that would not allow them to have their application accepted. He stated that there will be no one to file charges against because of the immunity from liability in HB 825.

REP. MEASURE stated that the committee is dealing with an element that basically wants permits so they can carry concealed handgun hunting deer and he felt that these people are in the lunatic fringe. He stated that the committee has no right to pass HB 825.

Motion/Vote: **REP. CLARK** moved to amend HB 825 by striking the word "consent" on page 2, subsection c, line 8 and striking everything beyond that up to line 11. Motion carried.

Motion/Vote: **REP. CLARK** moved to amend HB 825 by deleting line 9, on page 9, which deals with the applicant having to pay for the background check. Motion failed.

Motion/Vote: **REP. MEASURE** moved to amend HB 825 by striking section 6. Motion failed.

Motion/Vote: **REP. BROWN MOVED HB 825 DO PASS AS AMENDED.** Motion carried 17 to 3 with Rep's: Whalen, Toole, and Measure voting no.

HEARING ON HB 618
REVISE CRIMINAL APPEAL TO DISTRICT COURT

Presentation and Opening Statement by Sponsor:

REP. BERGSAGEL, HOUSE DISTRICT 17, stated that HB 618 is an act conforming the procedure for an appeal of a criminal decision from a Justice's or City Court to the appeal of a civil decision and transmit all the appeal documents to the court of decision. He stated that the bill changes the time period for which documents are to be transferred to the District Court.

Proponents' Testimony: NONE

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

EXECUTIVE ACTION ON HB 618

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL "Hearings" DATE 2-20-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

3:50
2-21-91
JDB

HOUSE STANDING COMMITTEE REPORT

February 21, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 825 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Page 2, lines 8 through 11.
Strike: ", unless" on line 8 through "crime" on line 11

2. Page 3, line 3.
Strike: "probable"
Insert: "reasonable"

3. Page 5, lines 8 through 13
Strike: lines 8 through 13 in their entirety

4. Page 5, line 17.
Strike: "Number of years"
Insert: "Dates of employment"

5. Page 5, line 24.
Strike: "15"
Insert: "5"

6. Page 6, line 1.
Strike: "Number of years"
Insert: "Dates of residence"

7. Page 6, line 10.
Following: "ARRESTED"
Insert: "FOR"
Strike: "COURT-MARTIALED"
Insert: "CONVICTED OF A CRIME OR FOUND GUILTY IN A COURT-MARTIAL PROCEEDING"

8. Page 6, line 21.
Strike: "FIVE"
Insert: "THREE"

9. Page 7, lines 4 and 5
Strike: lines four and five in their entirety

3:50
2-21-91
7 DR

10. Page 8.
Following: line 1
Insert: ".....
Date of application
This application must be signed in the presence of the sheriff or his designee."

11. Page 9, line 5.
Following: "permits."
Insert: "Replacement of a lost permit must be treated as a renewal under this subsection."

12. Page 9, line 21.
Strike: "it was issued"
Insert: "the permittee resides"

13. Page 11, line 25.
Following: "weapon"
Insert: ", except that for purposes of [sections 1 through 8] concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon"

14. Page 12, line 2.
Strike: "does"
Insert: "and [section 8] do"

15. Page 12, line 17.
Following: "(8)"
Insert: "an agent of the department of justice or"

16. Page 12, lines 17 and 18.
Strike: "the office of the attorney general or in"

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 28, 1991, at 9:30 a.m.

ROLL CALL

Members Present:
Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HOUSE BILL 825

Presentation and Opening Statement by Sponsor:

Representative Dave Brown, District 72, said HB 825 would revise the concealed weapons law on which the 1989 Legislature spent considerable time before it died on third reading in the House. He stated that Representative Strizich, the Great Falls Sheriff, and others spent time during the interim putting this legislation together which passed the House 97-3.

Representative Brown explained that Section 1 provides a for a two-year permit to be issued by a sheriff, along with photograph identification. He said applicants must be residents of the state for six months, and that pages 1-3 list causes for denial. Representative Brown reported that applicants must also complete a firearms training course, and that the process will be consistent statewide.

Representative Brown further stated the sheriff is required to notify the area chief of police and the Department of Justice when permits are issued. He said the latter part of Section 3 provides that a sheriff may charge $50 for an application and $5 for fingerprint fees; Section 4 provides for an appeal process; Section 5 requires notifying the county of a change of residence; Section 6 provides immunity from liability for sheriffs; Section 7 addressed carrying weapons under the influence; Section 8 lists places where concealed weapons are prohibited; Section 9 provides a new definition of concealed weapons; Section 12 provides that existing permits carry on until their expiration dates. He said he believes this is responsible legislation, and asked the Committee to pass the bill.

Proponents' Testimony:

Clyde Byerly, Vice President, Montana Rifle and Pistol Association, read from prepared testimony (Exhibit #1). He said permits are denied right now on the whims of judges instead of applicants' qualifications. He stated that with the recent change to hunting big game with handguns, sportsmen need to be exempt. Mr. Byerly further stated that the office of primary responsibility should be the one best able to perform background checks, and that it would generate revenue for sheriffs via application fees. He said restrictions on carrying firearms in public places are addressed in the bill, and that he believes it is time for this law.

Charlie Hughes, Butte Gun Club, and Montana Rifle and Pistol Association, said HB 825 was written with the support of the law enforcement community, and is supported by NRA and private sector interests. He urged the Committee to pass the bill.

Charlie Kiss, Buffalo Road Muzzle Loaders, asked the Committee to pass HB 825.

Rick Later, Beaverhead County Sheriff and Montana Sheriffs and Peace Officers, stated his support of the bill.

Bob Butorovich, Butte Silverbow Sheriff, asked the Committee to support HB 825.

Representative Bob Clark, District 31, said HB 70 (1989 Session) was flawed in many ways, but the problems were worked out in the interim. He told the Committee that HB 825 is patterned mostly after Idaho law, passed in 1989. Representative Clerk advised the Committee that Florida, Michigan, Indiana, and Missouri have also passed similar legislation. He said Washington has had similar legislation since 1935.

A.M. Elwell, Montana Weapons Collectors Society, Montana Machine Sports, and Montana Game Association, read from prepared testimony. He said the process used now is discriminatory, and that he highly recommends passage of HB 825. He commented that the

bill does not say applicants must apply in the county in which they reside.

Written testimony sent by John C. Lenzier, Montana Liaison, National Rifle Association, was introduced (Exhibit #3).

Vito Ciliberti, Missoula, said he represented himself and a number of women friends in the Missoula area. He told the Committee these women were involved in firehouse training courses for women, and that a deputy sheriff made the comment that they would have to protect themselves. Mr. Ciliberti stated that his daughter would like to have this legislation in Montana, as it is now in Oregon. He quoted an article in the Missoulian, dated March 22, 1991, from Dateline Washington, on rape of women.

Opponents' Testimony:

There were no opponents of HB 825.

Questions From Committee Members:

Chairman Pinsoneault commented that the penalty is far too lenient if someone carries a concealed weapon while under the influence of alcohol.

Senator Crippen asked why applicants must go through this education process. Representative Brown replied the bill requires a firearms course, and said he believes people need to be reminded of how to deal with weapons properly.

Senator Crippen asked if people could go through airports carrying a concealed weapon. Lewis and Clark County Undersheriff, Bill Fleiner, replied that concealed weapons can't be taken into public buildings, and that even law enforcement officers don't often carry weapons on airlines during extradition.

Senator Crippen asked if he would have to apply in Yellowstone County since he resides there. Bill Fleiner replied that applicants must reside in the State for a period of six months, but can apply in any county. He said that the 1977 Legislature determined that all persons in the state be held in the same standards, and asked the Committee to keep in mind the training aspects of the bill. Mr. Fleiner further commented that it is very important to the Sheriffs and Peace Officers to know that individuals carrying concealed weapons possess the capability to use them properly.

Senator Crippen asked if the permits pertain to one particular type of weapon. Bill Fleiner replied it covers any handgun.

Senator Svrcek asked why the standards were changed from "probable" to "reasonable" on page 3 of the bill. Representative Brown replied he does not believe people are trying to set up a different system.

Senator Svrcek asked if a permit would be issued to a person with a history of family abuse. Representative Brown replied that law enforcement would check this, and said he doesn't believe they would issue a permit in such a situation. He stated that John MacMaster, Attorney, Legislative Council, drafted an amendment strking Section 7. He further stated that page 11 requires a reasonable explanation for requesting a permit, and that law enforcement not only has concerns about issuing these permits, but will go to great lengths to not put people in abusive situations.

Senator Mazurek commented that a sheriff can't deny an application, unless he or she finds the applicant ineligible. Representative Brown replied that applicants cannot be denied unless a sheriff has reasonable cause to believe the applicant is mentally ill, etc. (page 3, line 6). He said, "The bill sets a low standard for rejection".

Senator Mazurek stated that unless an applicant is mentally ill a sheriff cannot deny a permit. He asked if there is a bad reason for having a weapon. Representative Brown urged the Committee to be careful if it decides to amend the bill.

Senator Mazurek commented that the immunity in the bill requires no accountability or responsibility from sheriffs at all. Representative Brown replied he doesn't believe law enforcement people will react this way. Bill Fleiner responded that immunity is the most critical part of this legislation, and that he doesn't believe it will lessen law enforcement acting judiciously. He further stated that, "The sheriffs probably don't want people to have concealed weapons, quite frankly".

Senator Mazurek again stated that if a sheriff is concerned, but can't plug an applicant into mentally ill status or the applicant does not have a felony record, that sheriff can't deny a permit. He further stated that he agrees with Representative Brown that there will be some court cases.

Senator Towe advised the Committee that there is a double negative in the sentence on page 3 (g). Representative Brown replied that it says "or unless", and is not a double negative.

Senator Towe suggested amending the bill on line 8, inserting "or otherwise may be a threat to the peace and good order of the community". He also asked if a gun or a knife in a woman's purse would be a concealed weapon. Bill Fleiner replied that a one needs a permit to carry a weapon in a purse on their person. He said he believes this is covered by existing law.

Senator Towe stated that a knife is a concealed weapon, but no training is required to carry a knife. He also asked if there is any other law the Committee doesn't know about (page 1, lines 24-25). Representative Brown replied he was not aware of any.

Senator Svrcek asked if applicants must apply in the county in which they reside. Representative Brown replied they do (Section 3, page 10). He stated that a permit may be revoked if circumstances arise indicating revocation, and that the drafters tried to make this language unique to the situation in Montana.

Closing by Sponsor:

Representative Brown asked that Senator Jacobson carry HB 825, and that Senator Pinsoneault carry it if she cannot.

HEARING ON HOUSE BILL 451

Presentation and Opening Statement by Sponsor:

Representative Vivian Brooke, District 56, said HB 451 would generally revise laws concerning sex crimes. She stated she believes it would strengthen the Code concerning crimes with victims, and would clarify what "we call crimes" without victims. She provided a proposed amendment (Exhibit #4).

Proponents' Testimony:

Holly Franz, Womens Law Section of the State Bar Association, strongly urged the Committee to support HB 451. She read from prepared testimony and provided an amendment (Exhibits #5 and #6), and said the amendment is somewhat complicated.

Ms. Franz stated there is no reason for Section 1 now, and commented that Senator Crippen carried a bill in 1985 eliminating the crime of spousal rape (Section 2). She further stated that Section 3 is covered in HB 211 (Representative Bradley), and Section 4 covers indecent exposure. Ms. Franz said Section 5 is an incest provision, and commented that the current penalty is one-half of what it is for other rape. She stated that Section 6 addresses "date rape", and said Montana law is unique in this area as each sexual assault is looked at on an individual basis.

Ms. Franz continued, and said Section 7, defining sex, removes sexual deviate acts. She stated that 45-2-101, MCA, provides general definitions (pages 7-24). and that Sections 8-17 are miscellaneous renumbered provisions which have nothing to do with the bill. Ms. Franz further stated that section 18 is the repealer of deviant sexual acts.

Ms. Franz told the Committee that HB 451 only affects consensual adult homosexual sex, and that 25 states have adopted similar legislation. She said the American Bar has recommended decriminalization of consensual adult homosexual sex, as no one is harmed. Ms. Franz further stated there is no textual privacy guarantee in the U.S. Constitution, as in the Montana Constitution. She told the Committee that science has indicated that people have no control over this preference, and that most county attorneys

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 3 March

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

Montana Rifle & Pistol Association

affiliated with
National Rifle Association

Jan 31
HB 825

Testimony of Clyde G. Byerly

Subject: House Bill 825. Concealed handgun carry bill.

I wish to express support for the bill. I represent the Montana Rifle and Pistol Association which is a State membership organization of shooting sports and hunting enthusiasts.

The present method of reviewing and granting handgun carrying permits is not standardized within the State. There are no specific guidelines for use to determine if applicants are eligible for a permit to carry. All to often permits have been denied based on the personal whims and philosophy of judges rather than the applicants qualifications.

We need to codify the requirements which persons must meet to be considered for the issuance of a permit. The restrictions in the bill that spell out under what conditions a permit will be denied are comprehensive and adequate for the issuing agency to make an informed decision on denying a permit.

With the recent advent of big game hunting with handguns. many sportsmen in the field are carrying pistols which are best carried and protected under protective clothing. At present these persons are in technical violation of the laws. We need to exempt sportsmen in the field from the present concealed carry restrictions.

The application for the permit attached to the bill should be concise and to the point.. Issuance of th permit is based on the character and eligibility of the applicant. In short, the application for the permit should be as simple as possible for the sheriff to make the determination if the INDIVIDUAL does not fall into any of the categories that would result in the denial of a permit. The detail and the information required on it should not be a hinorance to the average person which would discourage them from requesting a permit.

Ex. 1
3/28/91
HB 825

The office of primary responsibility for issuance of the permit should be the one which can best perform background checks on applicants. With a 2/3 favorable vote, the liability limitation in the bill will encourage the County Sheriffs to perform this service for the public.

This is a revenue generating bill for the County Sheriffs because the actual cost of the initial background check will be more than adequately covered by the application fee. The application fees should reflect the actual cost of conducting a background investigation. The fee in the bill is high enough to cover these costs but not so high that it discourages the average person for applying for a permit. The figure of $50.00 for the initial fee plus the addition of $5.00 for the fingerprinting is more than sufficient to cover the actual cost of the check. Cooperation between law enforcement agencies makes the background check a routine communication matter.

The restrictions on carrying firearms in public places in the bill have been reviewed and discussed with various law enforcement agencies and officers. We feel that the restrictions available to local governments are adequate to protect the public.

This act in no way degrades the current laws which prohibit the ownership and carrying of various firearms which have already been classified as illegal to posses or carry.

In summary, this is a law whose time has come. We must bring organization and reason to the present inconsistent system.

END

Exhibit 2
20 Mar. 91
HB 825

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS CHARLIE JONES. I AM HERE BEFORE YOU TODAY TO REPRESENT THE BUTTE GUN CLUB AND THE MONTANA RIFLE AND PISTOL ASSOCIATION AS THEIR CHAIRMAN OF THE LEGISLATIVE COMMITTEE.

THE LEGISLATION BEFORE YOU, HOUSE BILL 825, IS WELL WRITEN AND LONG OVER DUE. OUR CURRENT SYSTEM OF ISSUING PERMITS IS DISCRIMINATORY AND HAS NO SYSTEM IN PLACE REQUIREING BACKGROUND CHECKS OF PERMITTEES. IT ALSO HAS NO GUIDELINE AS TOWHO CAN RECEIVE A PERMIT AND WHO CAN NOT, THIS SYSTEM HAS ~~BEEN THE CAUSE~~ FOR ABUSES IN SOME AREAS OF THE STATE.

THIS BILL WAS WRITTEN WITH THE SUPPORT OF THE LAW ENFORCEMENT COMMUNITY. IN FACT THE ORIGINAL DRAFT WAS WRITTEN BY POLICE CHIEF JONES OF GREAT FALLS. THIS BILL IS FUTHER SUPPORTED BY THE MONTANA RIFLE AND PISTOL ASSOCIATION, THE NATIONAL RIFLE ASSOCIATION AND THOSE OF INTEREST IN THE PRIVATE SECTOR. IT THOUGHLY ADDRESS THE CONCERENS OF BOTH THE LAW ENFORCEMENT COMMUNITY AND THOSE OF THE PRIVATE CITIZENS OF OUR STATE.

AT THIS TIME I WOULD LIKE TO VOICE OUR UNQUALIFIED SUPPORT OF HOUSE BILL 825 AND SINCERELY HOPE THAT THIS COMMITTEE WILL GIVE IT A RESOUNDING DO PASS RECOMINDATION IN ITS CURRENT FORM.

THANK YOU FOR THE OPPORTUNITY TO SPEAK BEFORE YOU TODAY.

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

March 27, 1991

The Honorable Richard Pinsoneault
Senate Judiciary Committee Chairman
Montana State Capitol
Capitol Station Room 412
Helena, MT 59620

Dear Senator Pinsoneault:

On behalf of the National Rifle Association's more than 20,000 Montana members let me thank you for your efforts with regard to concealed carry reform in Montana. House Bill 825 is enthusiastically supported by the NRA and its members. I must, however, apologize for not attending the Senate Judiciary Committee Hearing of March 28; scheduling commitments have made the trip impossible.

House Bill 825 is an excellent proposal to complete the job that was started by the State Legislature in the previous session, and was passed favorably in the House on third reading by a vote of 92-7. I do, however, offer three minor, but important amendments to improve the bill and to ensure the intent of the Legislature and the concerns of Montana firearms owners are well met by enactment of HB 825. Those amendments can be found on pages 3-4 of the enclosed testimony, and I welcome any opportunity to assist you and your staff as may be needed.

Again, I apologize for being unable to attend the committee hearing and I do appreciate the opportunity to submit written testimony for the record to share with you and the Committee members the concerns of the National Rifle Association. If you have any further questions, or if there is anything else I can do for you on this issue during this legislative session, do not hesitate to contact me at (202) 828-6366.

Sincerely,

John C. Lenzi

John C. (Jack) Lenzi
Montana Liaison

Exhibit # 3
HB 825 3/28/91

TESTIMONY OF

THE NATIONAL RIFLE ASSOCIATION

ON HR 417 AND IN SUPPORT OF HR 825

SUBMITTED BEFORE THE MONTANA SENATE JUDICIARY COMMITTEE

MARCH 28, 1991

John C. Lenzi

Montana Liaison

On behalf of the National Rifle Association, our 20,000 Montana members, their families, and sportsmen across the state, thank you for the opportunity to testify on HR 417, and in support of HR 825. My name is John Lenzi and I am the NRA Liaison for Montana.

As you know, the NRA has considered concealed carry permit reform an important element in the overall scheme of Montana state firearm laws. The 1980s was a decade of pro-firearm owner legislative reform encompassing state constitutional amendments, state preemption laws, sportsmen protection statutes, and, of course, concealed carry permit reform. There has been a growing concern among Montana residents, and law-abiding citizens nationally, over violent crime and the ability to lawfully carry a concealed handgun for personal protection if they have a need or desire to do so. The proposal before you today, HR 825, is a significant step in the right direction to create such a permit system. The NRA applauds the efforts of legislators, the law enforcement community, and Montana gun owners and sportsmen who have come together on this bill to address the needs and concerns of Montana residents.

In this regard, several of your colleagues in the House of Representatives deserve special mention for their efforts on HR 825. Representatives Dave Brown, William Strizich, and Robert Clark have been particularly active and helpful in discussions with Montana law enforcement, the Montana Rifle and Pistol Association, and of course, the NRA. Their exemplary work on HR 825 has created a well-written, well-thought out

proposal that has, as you know, already passed the House on a third reading vote of 92-7. I look forward to working with members of this committee, as well as the rest of the Senate, on HR 825, and I am certain that an excellent bill will be enacted.

HR 825 proposes to create a "shall issue" permit system administered by Montana sheriffs. Such a system eliminates the discretionary language found in the current statute, but does in fact establish a clear set of criteria that both law enforcement and permit applicants must abide by. HR 825 retains the current statutory requirement mandating six (6) months of state residency before an applicant may be eligible for the carry license. A limit of 60 days is provided for, during which time the sheriff must run a background check of the applicant, prior to issuance of the carry permit. It is obvious that only law-abiding residents will submit to a background check/permit system; the NRA accepts such permit systems due to political necessity. The NRA and Montanans across the state are satisfied with these provisions, and while the time periods could be somewhat shorter, there is certainly no logical reason to lengthen them.

It should be made clear that while the NRA supports each individual's right to possess and carry firearms, it does not advocate that all law-abiding citizens in fact do so. The decision to own firearms and (particularly) to carry a handgun for self-protection, is a deeply personal choice. Many who choose to own firearms, <u>will not</u> choose to obtain a concealed carry permit. However, HR 825 will ensure that those honest Montanans who elect to carry a handgun for personal protection will be able to do so through a permit

system which is both fair and uniform.

I would, however, like to take this time to note several provisions of the bill which cause the NRA concern. First, as was established in NRA testimony before the House Judiciary Committee, the NRA remains concerned over Section 1, paragraph 2 -- the demonstration of familiarity provision. Under this section of HR 825, an applicant must demonstrate familiarity with a firearm through a number of different means provided for in the bill. As is currently written, the sheriff is given the authority to choose the criteria that the applicant must meet. To avoid any possible abuse of this discretionary authority, I urge this Committee to amend paragraph 2 to allow the applicant to choose the criteria by which to demonstrate familiarity with a firearm. Sufficient language for this purpose would be as follows: "(2) An applicant for a permit under this section must, as a condition to issuance of the permit, demonstrate to the sheriff familiarity with a firearm by any one of the following:" The applicant will, of course, be required to prove or demonstrate that familiarity as provided for in Section 1, paragraph 3.

Second, the NRA again voices its concern over Section 1, paragraph (1)(g), specifically the "reasonable cause" language found in lines 6 and 7. To fully protect the due process rights of Montana residents, this language should either be deleted or significantly redrafted. This can be done while retaining the limited discretion desired by law enforcement to deal with persons they "know" to be perhaps mentally unstable. Sworn affidavits by individuals having personal knowledge of the applicant's behavior, or a pattern of behavior, that suggests the applicant is a danger of himself or others, submitted to the sheriff should be adequate to address the due process rights of Montana residents as well

as law enforcement concerns. Without such due process safeguards, this current language invites potential abuse, as well as potential lawsuits against the sheriff and the state.

Third, Section 8 specifies " a building owned or leased by the federal, state, or local government" as an area where carrying a concealed weapon is prohibited. This provision can be improved by adding language to provide for "notice" to the concealed handgun permit holders. This can be done by adding "known or reasonably should be known to be" following "a building" and before "... owned or leased..." The provision would then read a) a building known to be or reasonably should be known to be owned or leased by the federal, state, or local government." This change is in complete order with the "purposely or knowingly" language regarding the act of carrying concealed into these prohibited areas. Simple fairness dictates that a permit holder not be punished if he or she had no way of knowing whether or not a particular building was owned or leased by the government.

With regard to HB 417, it is clear that it is not the intent of the Montana legislature to impact adversely on the lawful and legitimate ownership, use, transportation, or transfer of firearms in Montana. To ensure that HB 417 will only impact on the unlawful use of firearms, we do, however, urge the adoption of two minor, but potentially vital amendments.

In Section 2, paragraph 1, "civil disorder" is currently defined as "[means] a public disturbance involving acts of violence by a group of two or more persons that causes an

immediate danger of, or results in injury to, the property or person of any other individual." This definition can more clearly apply only to criminals by adding the word "unlawful" to the definition. Thus, the new definition of "civil disorder" would be "[means] a public disturbance involving unlawful acts of violence...".

Secondly, under Section 3, paragraph 3, item (f) (regarding self-defense training), the exemption currently reads: "an activity intended to teach or practice self-defense or self-defense techniques; or ". This section can similarly be improved to include actual acts of self-defense. Thus, Section 3, paragraph 3, item (f) should read "lawful self-defense or defense of others, or an activity intended to teach or practice self-defense or self-defense techniques; or".

Thank you again for the opportunity to submit testimony on HR 417, and particularly in support of HR 825. Montanans have long desired reform of the states concealed carry permit laws, HR 825 is a proposal that honest residents, law enforcement, and the legislature can be well satisfied with. I urge this Committee to consider the proposed amendments found in my testimony, and to report favorably HR 825. I am happy to answer any questions you may now have and offer the NRA's assistance on the aforementioned issues.

DATE 3-25-91 p 1062

COMMITTEE ON Judiciary

VISITORS' REGISTER H.B. 325 HB 451

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Charlie Hughes	Montana Rifle & Pistol Assn Butte Sportsmen Club	825	✓	
Charlie KISS	BUFFALO ROAD MUZZLELOADERS MSSA	825	✓	
C.F. Sutton Jr.	SELF	825	✓	
Clyde G. BYERLY	Mt. Rifle & Pistol Assn	825	✓	
GRETTA ARENDT	SELF	451	✓	
Kent Johnson	I & C C - Cmty Health Dept	451	✓ with amend.	
Greg Bartholomew	Lewis City County Health	451	✓ with amend.	
Bruce Desaia	Mt Dept Health & ES	451	✓ with amendments	
Jim Todd	Human Rights Network	"	✓ with amend	
Dan Barnett	—	451	✓	
Pete Brown	HD #72 - SPONSOR	HB 552 825	✓	
A.M. Elwell	WCSM		✓	
" "	MT Shooting Sports Assn.		✓	
" "	Big Sky Pistol Assn		✓	
" "	Western MT F & G Assn.		✓	
Vito Ciliberti	self & ci groups of Missoula Cty Women	HB825	✓	
Rick LaTare	MT. Sheriff's & Peace Off	HB 825	✓	
Mike Bartowski	MT Sheriff & Peace Off Assn	HB 825	✓	
Lily Franz	Women's Law Section	HB 451	✓ with amendment	
John Connor	MT County Attys Assn	HB 451	✓	
Jay Fenderson	Women's Law Section of State Bar	HB 451	✓ with amendment	
Rep Robert Clark	H.D. 31	HB 825	✓	
Dan SUMMERS	OUT IN MONTANA	HB 451	✓ with amend	
Dawn O'Keefe	self	HB 451	✓ with amend	
Steve Kingsley	Out In Montana	HB 451	✓ with amend.	
Jennifer Bottomly	Self	HB 451	✓ with amend.	

(Please leave prepared statement with Secretary)

Chairman Mazurek asked Senator Pinsoneault if he would have the resolution drafted for the Committee. Senator Pinsoneault replied he would have it done by noon on Wednesday, April 3, 1991.

Senator Svrcek asked if it is proper to direct a standing committee to address this during the interim. Chairman Mazurek replied it can be requested, but not forced upon the standing committee. Senator Towe replied that it can be mandated by a Committee bill, and requested by a resolution.

Senator Brown made a motion that HB 797 BE TABLED. The motion failed 6-6 in a roll call vote (attached).

EXECUTIVE ACTION ON HOUSE BILL 825

Motion:

Discussion:

Senator Towe provided his amendments and those of Legislative Council Attorney John MacMaster (Exhibits #4 and #5).

Senator Halligan said he was concerned about eligibility when applying, as some misdemeanor crimes can involve violence. Representative Robert Clark, District 31, replied that would be reason for denial, and is covered in the bill. He said such an applicant would have to appeal to the district court.

Senator Svrcek stated that, in the bill right now, a sheriff cannot deny a permit for any offense of less than one year (Sections (a)-(h)).

Senator Grosfield stated that "or" on line 6 is the key word.

Senator Mazurek asked Representative Clark if he had concerns. Representative Clark replied that the law enforcement community is satisfied with the bill.

Senator Mazurek said he could not believe that the bill would make the sheriffs issue the permits. Representative Clark again replied that the law enforcement community is satisfied with the bill as it is.

Chairman Pinsoneault asked how many states have this legislation now. Representative Clark replied that Idaho, Florida, Washington, and Michigan have similar legislation.

Amendments, Discussion, and Votes:

Senator Towe made a motion to approve the MacMaster amendments (Exhibit #5). The motion carried unanimously.

Senator Mazurek made a motion to amend page 14, line 2, dealing with restriction of local government regulations, by deleting "concealed" and inserting "a handgun or a concealed handgun". The motion carried unanimously.

Senator Mazurek suggested deleting subsection (c) on page 11, in Section 8, and inserting "any premises which has an on-premise beer or all-beverage license". Representative Clark replied that subsection deals with restaurant/bars, and was requested by the Sheriffs and Peace Officers Association.

Senator Towe made a motion to delete "a full meal". The motion carried with all members voting aye except Senators Crippen and Harp who voted no.

Recommendation and Vote:

The Committee deferred final action on HB 825 until Wednesday, April 3, 1991.

ADJOURNMENT

Adjournment At: 12:30 p.m.

Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 2 Apr 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

Exhibit 4
2 Apr 91
HB 825

Amendments to House Bill No. 825
Third Reading Copy (BLUE)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
April 1, 1991

1. Page 1, line 22.
Following: "."
Strike: "This"
Insert: "Except as provided in subsection (2), this"

2. Page 3, lines 5 through 9.
Following: "court" on line 5
Strike: remainder of line 5 through "weapon" on line 9

3. Page 3, line 12.
Following: line 11
Insert: "(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon."
Renumber: subsequent subsections

4. Page 4, line 7.
Strike: "(2)(a)"
Insert: "(3)(a)"
Strike: "(2)(c)"
Insert: "(3)(c)"

5. Page 4, lines 9 and 15.
Strike: "(2)"
Insert: "(3)"

6. Page 11, line 5.
Following: "weapon"
Insert: ", except for actions that constitute willful misconduct or gross negligence"

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Ex #2
2 Apr 91
HB 825

Amendments to House Bill No. 825
Third Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster
March 4, 1991

1. Page 12, line 19.
Following: "AND"
Insert: ", except for a person referred to in subsection (7),"

Recommendation and Vote:

Senator Harp made a motion that HB 776 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 559

Motion:

Discussion:

Amendments, Discussion, and Votes:

Valencia Lane presented two sets of amendments and a gray bill, and said Peter Funk no longer wants to strike Section 10 of the bill. She said this puts drug testing back in the bill, as originally introduced (Exhibits #2, #3, and #4).

Senator Halligan stated that he was concerned about probable cause, and believes this is a reasonable compromise.

Senator Harp made a motion to approve Peter Funk's amendments (Exhibit #2), except for amendment #6 (striking Section 10). The motion carried unanimously.

Valencia Lane explained that #2 of Senator Towe's amendments are the same as #4 of Peter Funk's amendments. She stated that is all the amendments are adopted, she would merge those two.

Senator Towe made a motion to approve his amendments (Exhibit #4). The motion carried unanimously.

Recommendation and Vote:

Senator Harp made a motion that HB 559 BE CONCURRED IN AS AMENDED. The motion carried unanimously. Senator VanValkenburg or Senator Halligan will carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 825

Motion:

Discussion:

Amendments, Discussion, and Votes:

Valencia Lane reminded the Committee that they adopted Representative Dave Brown's amendments and Senator Mazurek's

amendments. She said Senator Towe's amendments add a new section on page 3, line 12, denying permits for mentally ill, mentally defective, and mentally disabled. She said she also added Senator Mazurek's language concerning people who are a threat to the community.

Senator Crippen said he could see a sheriff being put in the same position that a judge is in now, and asked why the Committee would want to put this language into the bill. Senator Svrcek replied that, without this amendment, a sheriff has to grant a permit.

Senator Svrcek made a motion to amend Senator Towe's amendments by placing a two-year sunset on this section of the bill. He said it gives the opportunity to see how the sheriffs are doing, and that he believes taking all discretion away from law enforcement is dangerous. The amendment would add a termination date to new Section 1, subsection (2). The motion carried unanimously.

Senator Towe stated that he believes a sheriff needs some discretion.

Senator Halligan stated he believes the sunset provision is a good idea, but for the entire bill. He said he didn't believe law enforcement, as a whole, has had a chance to look at this issue.

Senator Crippen commented that any problems that develop can be taken care of next session.

Senator Towe made a motion to approve his amendments, as amended by Senator Svrcek. The motion carried unanimously.

Recommendation and Vote:

Senator Svrcek made a motion that HB 825 BE CONCURRED IN AS AMENDED.

Senator Halligan said he was concerned about language on page 10, line 14 of the bill. Representative Clark replied that the application form was modified in the House Judiciary Committee. He said an applicant must apply in his or her county of residence.

Senator Halligan commented that a background check is required on new applications, but is not required upon renewal. Representative Clark replied that he believes any violation of the law would be a matter of record.

Senator Halligan said he believes this language needs to be changed to allow routine criminal records checks upon renewal.

Senator Towe suggested striking "who has not submitted prior application to the sheriff", on page 9, line 19.

Senator Halligan made a motion to approve the amendment suggested by Senator Towe. The motion carried unanimously.

Senator Towe said he did not explain #6 of his amendments, "except for actions constituting negligence or wilful misconduct".

Senator Svrcek's motion that HB 825 BE CONCURRED IN AS AMENDED carried with all members voting aye except Senator Harp who voted no.

EXECUTIVE ACTION ON HOUSE BILL 451

Motion:

Discussion:

Amendments, Discussion, and Votes:

Valencia Lane reported that the sponsor's amendment would return the bill to its original form (Exhibit #5). She reminded the Committee that the bill would remove deviate sexual conduct and the penalty from the Code and would repeal bestiality and homosexual consensual sex.

Valencia Lane advised the Committee that Section 20, page 12, of the Second Reading copy of the bill (blue) is amended to leave bestiality in the law and remove homosexual consensual sex from the law. She also provided amendments proposed by Senator Svrcek (Exhibit #6).

Senator Halligan stated that he has been on the Governor's AIDS Advisory Council for about four years. He said pediatric and heterosexual AIDS also needs to be addressed, and that his focus is on children. Senator Halligan stated he did not want to get into an emotional conflict. He said he believes decriminalization will get people in for testing, as shown by national statistics.

Senator Crippen stated that Representative Lee's amendment was designed to meet this problem, and asked why it wouldn't work. Senator Towe replied that Representative Lee's amendment (page 38, lines 8-14) says the fact that a person seeks testing or treatment may not be used as a basis for prosecution, but it is still a crime. He said he agreed with Senator Halligan, and that as much as he personally detests this activity, he doesn't see why the Committee should not pass this legislation.

Chairman Pinsoneault stated that the answer to the AIDS problem is testing every individual in this country. He said he is not in favor of decriminalizing bestiality or homosexual behavior among men.

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 3 Apr 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration House Bill No. 825 (third reading copy as amended -- blue), respectfully report that House Bill No. 825 be amended and as so amended be concurred in:

1. Title, lines 9 and 10.
Following: ";" on line 9
Strike: "AND"
Following: "MCA" on line 10
Insert: "; AND PROVIDING A TERMINATION PROVISION"

2. Page 1, line 22.
Following: "."
Strike: "This"
Insert: "Except as provided in subsection (2), this"

3. Page 3, lines 5 through 9.
Following: "court" on line 5
Strike: remainder of line 5 through "weapon" on line 9

4. Page 3, line 12.
Following: line 11
Insert: "(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled [or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon]."
Renumber: subsequent subsections

5. Page 4, line 7.
Strike: "(2)(a)"
Insert: "(3)(a)"
Strike: "(2)(c)"
Insert: "(3)(c)"

6. Page 4, lines 9 and 15.
Strike: "(2)"
Insert: "(3)"

7. Page 9, lines 19 and 20.
Following: "applicant" on line 19
Strike: remainder of line 19 through "sheriff" on line 20

8. Page 11, line 5.
Following: "weapon"
Insert: ", except for actions that constitute willful misconduct or gross negligence"

9. Page 12, line 19.
Following: "AND"
Insert: ", except for a person referred to in subsection (7),"

10. Page 14, line 2.
Strike: "concealed or"

11. Page 14, lines 3 and 4.
Following: "shotgun," on line 3
Strike: "or"
Following: "handgun" on line 4
Insert: ", or concealed handgun"

12. Page 11, line 23.
Strike: "full meals are not served and"

13. Page 15.
Following: line 13
Insert: "NEW SECTION. Section 16. Termination. The bracketed language in [section 1 (2)] terminates July 1, 1993."

Signed: R. Pinsoneault
Richard Pinsoneault, Chairman

4-4-91
Amd. Coord.

4-4-91 6:45 pm
Sec. of Senate